Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte DONALD C. BUTTON, NILANG DALWADI, RICK DOLCE, JOHN PRETE, AL BOZZI, NICK PINI, EMILIO COFRANCESCO, JEFF REILLY, JOE SPAGUA, and J. MICHAEL WEAVER

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Appeal No. 2003-0030
Application No. 09/660,871

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ON BRIEF

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Before COHEN, FRANKFORT, and STAAB, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 32 through 35, 37, and 38. Claim 36 stands withdrawn. These claims constitute all of the claims remaining in the application.

Appellants' invention pertains to a method of packing containers in a case using a case packing machine, a case feed section, a lift table section, and a grid section. A basic

understanding of the invention can be derived from a reading of exemplary claims 32 through 34, respective copies of which appear in "APPENDIX A" of the main brief (Paper No.14).

As evidence of anticipation, the examiner has applied the document specified below:

Bauer	3,653,178	Apr. 4, 1972

The following rejection is before us for review.

Claims 32 through 35, 37, and 38 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bauer.

The full text of the examiner's rejection and response to the argument presented by appellants appears in the answer (Paper No. 15), while the complete statement of appellants' argument can be found in the main and reply briefs (Paper Nos. 14 and 16).

In the main brief (page 3), appellants indicate that the group of claims 32 through 35, 37, and 38 stand or fall together. Our focus will be upon each of independent claims 32 through 34.

OPINION

In reaching our conclusion on the anticipation issue raised in this appeal, this panel of the Board has carefully considered appellants' specification and claims, the applied patent, and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

We do not sustain the rejection of claims 32 through 35, 37, and 38 under 35 U.S.C. § 102(b) as being anticipated by Bauer. We well understand the examiner's point of view that Bauer is anticipatory of the claimed method (answer, pages 4 and 5), but for reasons given below we are not in accord therewith.

Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990);

and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the law of anticipation does not require that the reference teach specifically what an appellant has disclosed and is claiming but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

A feature of each of appellants' independent method claims 32 through 34 is the step of releasing containers so that the containers "fall into" a case. The main thrust of appellants' argument on appeal is that the above feature is not taught by the Bauer reference.

Figs. 7 and 8 of Bauer clearly depict supporting rods 15 extending above the top edge of a high flange of the tray 16 before and immediately after commencement of a charging operation, respectively. However, the specification cryptically indicates (column 3, lines 68 through 72), seemingly contrary to the showing in Figs. 7 and 8, that before the charging operation,

supporting rods 15 "extend almost to the level of the top edge of the tray." For the reasons which follow, we determine that one skilled in the art, considering the entirety of the Bauer disclosure, would not expect the supporting rods 15 to be below the high flange of the tray 16 immediately after commencement of the charging operation. Patentee Bauer makes it clear to us that an object of the invention is to provide a lower risk of damage during tray-charging, when articles are dropped and fall by gravity a short or very small distance and attain only a small kinetic energy before being mechanically braked and then introduced in a controlled manner into a tray (column 1, lines 46 through 68, column 2, lines 4 through 11 and lines 24 through 27, and column 3, lines 47 through 53). In light of the above, we are of the view that it would make no sense to one skilled in the art to expect in the Bauer apparatus that the supporting rods would be below the high flange of the tray at the time of commencement of article charging since such a rod position would clearly not present a very small article dropping distance wherein only a small kinetic energy would be attained to lower the risk of article damage. Accordingly, the Bauer patent as a whole cannot fairly be understood to anticipate appellants' method step limitation of containers that "fall into" a case, a

recitation appearing in all independent claims on appeal. It is for the reasons set forth above that the rejection under 35 U.S.C. § 102(b) on appeal cannot be sustained.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)
CHARLES E. FRANKFORT Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
LAWRENCE J. STAAB Administrative Patent Judge	)

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APPEAL NO. 2003-0030 - JUDGE COHEN
APPLICATION NO. 09/660,871

APJ COHEN

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APJ STAAB

DECISION: REVERSED

Prepared By: Lesley Brooks

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DRAFT TYPED: 16 Mar 04

FINAL TYPED: